IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11295 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

1 & 2 Yes
3 to 5 No

RAMBHAI BHAILALBHAI PATEL

Versus

STAE OF GUJARAT

Appearance:
MR VIPUL S MODI for Petitioner
MR UMESH TRIVEDI, AGP for Respondent No. 1, 2

CORAM : MR.JUSTICE A.R.DAVE
Date of decision: 20/12/1999

ORAL JUDGEMENT

In this petition, the petitioner has challenged the validity of an order dated 14.8.98 passed in Revision Application No. TEN.B.A. 225/98 passed by the Gujarat Revenue Tribunal. Being aggrieved by an order passed by the Deputy Collector, Radhanpur, dated 15.7.93 passed in Ceiling Appeal No. 2/93, the petitioner had filed a

revision application before the tribunal on 10.6.98. As the said revision application was filed after about 5 years, on the ground of delay the said revision application was rejected by the impugned order dated 14.8.98. Being aggrieved by the said order, the petitioner has approached this court.

2. The facts in a nutshell with regard to the case are as under:-

3. The Mamlatdar and ALT (Ceiling), Palanpur had decided in Ceiling Case No. 3/87 (remand) that the petitioner, alongwith his wife was holding 97 acres and 30 gunthas of land. According to the provisions of Gujarat Agricultural Lands Ceiling Act, 1960 (hereinafter referred to as 'the Act'), the petitioner was holding excess land and therefore it was declared by the said order that the petitioner was holding surplus land to the extent of 52 acres and 30 gunthas. The said order was passed in pursuance of a remand order passed by the Tribunal in Revision Application No. TEN.B.A. 1558/84 dated 25.8.86 and Revision Application No. TEN.B.A. 1339/87 dated 3.7.87. The said order of the Mamlatdar & ALT (Ceiling) was passed at the beginning of the second round of this litigation. Before coming to the conclusion that the petitioner was having surplus land, the Mamlatdar and ALT had issued several notices to the present petitioner and his wife Smt. Kamlaben Rambhai Patel. It appears that in spite of issuance of five notices upon the petitioner and his wife, as the petitioner or his wife had neither responded to the said notices nor had remained present, the concerned Deputy Mamlatdar had personally served another notice to the petitioner and his wife before initiation of the proceedings under the Act by the Mamlatdar and ALT (Ceiling), Palanpur. I am referring to the above facts to show that the petitioner and his wife were absolutely negligent and careless right from the beginning with regard to the proceedings which were initiated under the provisions of the Act. Being aggrieved by the order dated 30.3.88 passed by the Mamlatdar and ALT (Ceiling), the petitioner had filed an appeal before the Deputy Collector, Radhanpur being Ceiling Appeal No. 2/93. The said appeal was rejected on 15.7.1993 and being aggrieved by the order passed in the appeal, the petitioner had filed the revision application before the Tribunal on 10.6.1998 which was ultimately rejected by an order dated 14.8.98, which is the subject-matter of the present petition.

4. The case of the petitioner is that the petitioner

had a son who was major on 1.4.76 and he was not holding any land on that day and, therefore, one additional unit ought to have been given to the petitioner and in that event, lesser land would have been declared surplus by the concerned authority. It is pertinent to note that the petitioner had not adduced any evidence before any authority at any stage that his son was major on 1.4.76 and, therefore, the petitioner was entitled to two units. Even in the earlier round of litigation, the petitioner had not adduced any evidence to substantiate his case. It is also pertinent to note that the petitioner had sold portion of his land to other persons. Being aggrieved by the order passed by the Mamlatdar & ALT dated 30.3.88, the buyers of the land had also filed an appeal before the Deputy Collector. They had challenged the said order because the land purchased by them was being declared surplus and the said land was to be vested in the State Government. In the said appeal, the present petitioner was one of the respondents. Notice was issued to the present petitioner by the Deputy Collector in the said appeal but the petitioner had not appeared before the Deputy Collector. The said appeal filed by the buyers of the land was rejected and the buyers had also challenged the order passed by the Deputy Collector by filing a revision application. Even before the revisional authority, the petitioner had not bothered to remain present though he was served with notices. The above facts clearly denote that the petitioner was absolutely negligent and careless throughout the entire proceedings. He had ample opportunities in the past to adduce evidence but he never bothered to adduce any evidence to show that he was entitled to have an additional unit of agricultural land because he had a major son on 1.4.76.

5. Ultimately, after hearing the petitioner and the respondent government, the revision application which was filed by the petitioner was rejected on 14.8.98. The revisional authority has referred to all the facts of the case and has also referred to the history of carelessness and callousness of the petitioner with regard to the present litigation.

6. The case of the petitioner before the revisional authority was that the petitioner was not aware of the order passed by the Deputy Collector dated 15.7.93. There is no substance in the said submission for the reason that the order passed by the Deputy Collector was served to the petitioner through his advocates. The revisional authority has discussed the behaviour of the petitioner in the impugned order. The petitioner had not even given his correct and complete address in the

proceedings which were initiated by him. Looking to the facts of the case, the revisional authority has rightly not condoned the delay. The case of the petitioner is that his advocate had not informed him about the said order, but this has not been believed by the revisional authority.

7. Learned Advocate Shri Vipul Modi appearing for the petitioner has relied upon certain judgments to show that the respondent revisional authority ought not to have become very harsh and ought to have condoned the delay. He has relied upon judgments delivered by this court in the case of Bhikhabhai Mavjibhai Patel v. State of Gujarat, 1994(1) GCD 18 and Chhaganbhai Ramabhai & Ors. v. Revaben wd/o. Chhotabhai Laxmidas & Ors., 1994(1) GCD 663. The said judgments have also referred to the judgments delivered by the Hon'ble Supreme Court in The Madras Port Trust v. Himanshu International, AIR 1979 SC 1144 and in Collector, Land Acquisition, Anantnag v. Mst. Katiji, AIR 1987 SC 1353. Moreover, it has been submitted by the learned advocate that looking to the law laid down by the Hon'ble Supreme Court which has been duly followed by this court in the judgments referred to hereinabove, the revisional authority ought not to have become technical and ought not to have rejected the revision application filed by the petitioner on the ground of limitation especially when the respondents were government authorities.

8. I have carefully gone through the judgments referred to by the learned advocate. Upon perusal of the law laid down in the said judgments, it is very clear that normally the government authorities should not become highly technical by raising the plea of limitation. The said legal position cannot be disputed. Looking to the peculiar facts of this case, however, I am of the view that the petitioner was absolutely careless right from the beginning of these legal proceedings. He had ample opportunities to represent his case before the concerned authorities. In two rounds of litigation he had remained absolutely careless as he had not adduced any evidence and therefore he had failed. The concurrent findings of the government authorities are against him. It is also pertinent to note that the persons who had purchased some of the lands belonging to the petitioner had also challenged the order whereby the Mamlatdar and ALT (Ceiling) had declared that the petitoiner was having surplus land. Even in the proceedings which had been initiated by the buyers of the land belonging to the petitioner, the petitioner had neglected to appear though he was a party to the said litigation and was served with notices in all the proceedings initiated by the buyers of

the said land. The said facts have been duly placed on record.

9. It is true that the government authorities should not raise a plea of limitation to defeat a just and rightful claim of a citizen but this would not mean that the judicial or quasi-judicial authorities should altogether ignore the carelessness and indolence of the litigants. Tolerance to laxity has also a limit. While determining the said limit one may also look at the general behaviour of the concerned litigant. By condoning the delay in any proceedings, some special or exceptional favour is done by the concerned authority to the person who has caused the delay. Before doing the said favour, the concerned authority has to look into several relevant factors which impeded the litigant from approaching the concerned forum in time and if, upon perusal of the facts of the case, the authority concerned comes to a conclusion that the litigant praying for condonation of delay was lethargic and there was no justifiable ground for condonation of the delay, the authority concerned would surely be loath to condone the delay.

10. Now, looking to the facts of the present case, one has to see whether the Tribunal was justified in rejecting the revision application of the petitioner on the ground of delay and whether the petitioner is justified in submitting that the government authorities should not have raised the plea relating to limitation before the Tribunal though filing of the revision application was delayed by more than four and a half year. In spite of service of six notices, the petitioner did not appear before the Mamlatdar and ALT (Ceiling) and did not lead any evidence. Even in the proceedings initiated by the buyers of the land which had been declared surplus, the petitioner did not appear at any stage though he was served with the notices. The ground advanced by the petitioner for condonation of the delay was that he was not informed by his advocates about the outcome of the proceeding before the Deputy Collector, Radhanpur. The said ground has not been believed by the Tribunal. Two advocates were engaged by the petitioner. In the proceedings before the Deputy Collector, the petitioner did not state his address but addresses of the learned advocates were stated and the learned advocates were duly informed about the outcome of the proceedings. One can safely presume that the learned advocates must have informed the petitioner but looking to the past conduct of the petitioner in the present proceedings and other proceedings which had been initiated in respect of

the land in question, the Tribunal has rightly come to the conclusion that the petitioner was indolent and did not care to do anything to continue the proceedings by filing the revision application within the period of limitation. Moreover, if the petitioner is really right in his submission that the lawyers were careless and did not inform him about the outcome of the proceedings concluded before the Dy. Collector, the petitioner would have taken some action against the lawyers. Looking to all these facts of the case, in my opinion, the Tribunal had rightly not condoned the delay as it did not find any justifying reason for condonation of the delay and I also do not see any reason to take a different view than the one taken by the Tribunal.

11. It is a settled legal position that the party seeking condonation of delay must show sufficient cause for the delay. The Hon'ble Supreme Court has observed as under in para 7 in the case of Ramlal and ors. v. Rewa Coal Fields Ltd., (AIR 1962 S.C. 361):

> "..... The other consideration which cannot be ignored is that if sufficient cause for excusing delay is shown, discretion is given to the Court to condone delay and admit the appeal. This discretion has been deliberately conferred on the Court in order that judicial power and discretion in that behalf should be exercised to advance substantial justice. As has been observed by the Madras High Court in Krishna v. Chathappan, ILR 13 Mad 269.
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> "Section 5 gives the Court a discretion which in respect of jurisdiction is to be exercised in the way in which judicial power and discretion ought to be exercised upon principles which are well understood; the words 'sufficient cause' receiving a liberal construction so as to advance substantial justice when no negligence nor inaction nor want of bona fide is imputable to the appellant."

12. Thus, it is very clear that delay should be condoned even by showing some leniency towards the party praying for condonation of delay provided no negligence or inaction or want of bona fides can be imputed to the party praying for condonation of delay. Looking to the facts of the case, it is very clear that one cannot say that the petitioner, who had made a prayer for condonation of delay, was not negligent or there was no inaction on the part of the petitioner. The petitioner

was absolutely negligent in the proceedings referred to hereinabove. He did not make any inquiry with regard to the outcome of the appeal for a considerably long period and looking to the behaviour of the petitioner, one can surely doubt his bona fides. In this set of circumstances, I do not think that any fault can be found with the conclusion arrived at by the revisional authority for not condoning the delay of 4 years and 6 months. Whether delay should be condoned or not is in the discretion of the concerned authority or court. The discretion is to be used after considering the facts of the case and looking to the facts of the case, it would also not be proper for this court to take a different view especially when the findings arrived at by the revisional authority are neither incorrect nor perverse.

13. In view of the facts stated hereinabove, I do not think that the Tribunal has committed any error by not condoning the delay and in my opinion the Tribunal was absolutely justified in rejecting the revision application on the ground of delay.

14. Learned AGP Shri Trivedi appearing for the respondent government has thus rightly submitted that the petitioner's behaviour and his attitude was absolutely careless and casual and he hardly bothered about the litigation. He never remained present before the concerned authority in the past. Moreover, it has also been submitted by learned AGP Shri Trivedi that even on merits the petitioner will not be in a position to get any relief even if the impugned order of the tribunal is quashed and set aside and the matter is remanded to the tribunal. He has relied upon the following facts to substantiate his argument.

15. The case of the petitioner is that he had a major son on 1.4.76. The major son was having land which was purchased by him jointly with his uncle. The said land was sold on 29.1.74 and therefore the major son of the petitioner was not having any land on 1.4.76. In the circumstances, the petitioner has claimed that the petitioner is entitled to one additional unit because his son was not having any land on 1.4.76. It is pertinent to note that the above facts were submitted by the advocate for the petitioner before this Court and there is no evidence on record to support the same as the petitioner had never adduced any evidence before the Mamlatdar & ALT at the relevant time. The learned AGP has drawn my attention to the provisions of sec. 8(1) of the Act. According to the deeming fiction created by the legislature in the said section, the land which was sold

by the son of the petitioner on 29.1.74 was deemed to have been sold in anticipation in order to defeat the object of the Act. According to the provisions of sec. 8(2) of the Act, if a person has sold his land within the period prescribed u/s 8(1) of the Act, the concerned person has to give an application to the Collector for a declaration that the transfer was not made in anticipation in order to defeat the object of the Act. It is not the case of the petitioner that the son of the petitioner had given an application under the provisions of sec. 8(2) of the Act and therefore by virtue of the deeming fiction of sec. 8(1) of the Act, the land which had been sold by the son of the petitioner would be included in the holding of the son. The petitioner's son was holding 66 acres and 2 gunthas of land along with his uncle. It is also pertinent to note that the uncle of the petitioner's son, that is, the petitioner's brother, was also having surplus land and the proceedings under the Act had also been initiated against the uncle. Looking to the facts of the case stated hereinabove, it appears that entertaining this petition would also not help the petitioner because the facts stated by the petitioner hereinabove are not on the record of the case.

16. Learned Advocate Shri Modi appearing for the petitioner has submitted that rejection of this petition might come in the way of the petitioner's son if in fact his son has submitted an application under the provisions of sec. 8(2) of the Act and if the said application has been granted. It has also been submitted by him that perhaps his son is not having any land other than the land which he was holding jointly with his uncle. If the said fact is correct, I am sure that this judgment will not come in the way of the petitioner's son in getting one more unit under the Act if he is entitled to.

17. Looking to the facts referred to hereinabove, this Court should not interfere with the impugned order and therefore this petition is rejected. Notice discharged.

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